

NOTICE OF PROPOSED REGULATORY ACTION

California Code of Regulations Title 15, Crime Prevention and Corrections Department of Corrections and Rehabilitation

NOTICE IS HEREBY GIVEN that the Secretary of the California Department of Corrections and Rehabilitation (CDCR), pursuant to the authority granted by Government Code Section 12838.5 and Penal Code (PC) Section 5055, and the rulemaking authority granted by PC Section 5058 and 5058.3, in order to implement, interpret and make specific PC Section 5054, proposes to amend Section 3000, 3043, 3075.2, 3097, 3195, 3320, and 3323 and adopt Sections 3078, 3078.1, 3078.2, 3078.3, 3078.4, 3078.5, and 3078.6 of the California Code of Regulations (CCR), Title 15, Division 3, concerning Alternative Custody Program (ACP).

PUBLIC HEARING:

Date and Time: November 30, 2012 – 9:00 a.m. to 10:00 a.m.
Place: Department of Corrections and Rehabilitation
Kern Room
1515 S Street – North Building
Sacramento, CA 95811
Purpose: To receive comments about this action.

PUBLIC COMMENT PERIOD:

The public comment period will close November 30, 2012 at 5:00 p.m. Any person may submit public comments in writing (by mail, by fax, or by e-mail) regarding the proposed changes. To be considered by the Department, comments must be submitted to the CDCR, Regulation and Policy Management Branch, P.O. Box 942883, Sacramento, CA 94283-0001; by fax at (916) 324-6075; or by e-mail at RPMB@cdcr.ca.gov before the close of the comment period.

CONTACT PERSON:

Please direct any inquiries regarding this action to:

**Timothy M. Lockwood, Chief
Regulation and Policy Management Branch
Department of Corrections and Rehabilitation
P.O. Box 942883, Sacramento, CA 94283-0001
Telephone (916) 445-2269**

In the event the contact person is unavailable, inquiries should be directed to the following back-up person:

**D. Hawkins
Regulation and Policy Management Branch
Telephone (916) 445-2314**

Questions regarding the substance of the proposed regulatory action should be directed to:

**J. Brown or C. Flores
Department of Corrections and Rehabilitation
(916) 327-8351 / (916) 324-6688**

LOCAL MANDATES:

This action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement of costs or savings pursuant to Government Code Sections 17500 – 17630.

FISCAL IMPACT STATEMENT:

- Cost to any local agency or school district that is required to be reimbursed: *None*
- Cost or savings to any state agency: *Estimated General Fund Redirection of \$6,902,229 to ACP. See Attachment A, Economic Fiscal Impact Statement, Alternative Custody Program.*
- Other nondiscretionary cost or savings imposed on local agencies: *None*
- Cost or savings in federal funding to the state: *None*

EFFECT ON HOUSING COSTS:

The Department has made an initial determination that the proposed action will have no significant effect on housing costs.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS:

The Department has initially determined that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

RESULTS OF ECONOMIC IMPACT ASSESSMENT:

The Department has determined that the proposed regulations will have no impact on the creation of new, or the elimination of existing jobs or businesses within California, or affect the expansion of businesses currently doing business in California, or the health and welfare of California residents, worker safety, and the state's environment.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES:

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

EFFECT ON SMALL BUSINESSES:

The Department has determined that the proposed regulations may not affect small businesses. It is determined that this action has no significant adverse economic impact on small business because they are not affected by the internal management of state prisons.

CONSIDERATION OF ALTERNATIVES:

The Department must determine that no reasonable alternative considered by the Department, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the proposed regulatory action. Interested persons are accordingly invited to present statements or arguments with respect to any alternatives to the changes proposed at the scheduled hearing or during the written comment period.

AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS:

The Department has prepared, and will make available, the text and the Initial Statement of Reasons (ISOR) of the proposed regulations. The rulemaking file for this regulatory action, which contains those items and all information on which the proposal is based (i.e., rulemaking file) is available to the public upon request directed to the Department's contact person. The proposed text, ISOR, and Notice of Proposed Action will also be made available on the Department's website <http://www.cdcr.ca.gov>.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS:

Following its preparation, a copy of the Final Statement of Reasons may be obtained from the Department's contact person.

AVAILABILITY OF CHANGES TO PROPOSED TEXT:

After considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this Notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Requests for copies of any modified regulation text should be directed to the contact person indicated in this Notice. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:

PC Section 5000 provides that commencing July 1, 2005, any reference to the Department of Corrections in this or any code, refers to the CDCR, Division of Adult Operations.

PC Section 5050 provides that commencing July 1, 2005, any reference to the Director of Corrections, in this or any other code, refers to the Secretary of the CDCR. As of that date, the office of the Director of Corrections is abolished.

PC Section 5054 provides that commencing July 1, 2005, the supervision, management, and control of the state prisons, and the responsibility for the care, custody, treatment, training, discipline, and employment of persons confined therein are vested in the Secretary of the CDCR.

PC Section 5058.3 authorizes the Director to adopt, amend, or repeal emergency regulations conducted pursuant to GC Section 11340.

This action provides the following:

- Amends section 3000 of the California Code of Regulations (CCR), Title 15, Division 3 by providing the definitions for Alternative Custody Program and Alternative Custody Program Participant, and providing revisions to definitions for Case Conference and Face-to-Face Contact.
- Amends sections 3000, 3043, 3075.2, 3097, 3195, 3320, and 3323 of the California Code of Regulations (CCR), Title 15, Division 3 concerning Alternative Custody Program.
- Adopts into the CCR, under Chapter 1, new Article 6.8, Alternative Custody Program. Under Article 6.8, establishes new sections 3078, 3078.1, 3078.2, 3078.3, 3078.4, 3078.5, and 3078.6 concerning Alternative Custody Program.
- Brings the Department into compliance with PC Section 1170.05 by adopting provisions that establish a process for the Alternative Custody Program. The Alternative Custody Program is designed to allow eligible inmates to be released into the community by participating in a voluntary alternative custody program in lieu of confinement in state prison.
- Defines “Residential Home,” Transitional Care Facility,” and “Residential Drug or Treatment Program” as described in statute.
- Establishes the criteria by which inmates may be eligible for consideration to participate in the Alternative Custody Program, the processes by which inmates are placed on alternative custody, and the circumstances in which inmates may be removed from Alternative Custody Program.
- Establishes the “eligibility” and “exclusionary” criteria by which inmates may or may not be able to participate in the Alternative Custody Program.
- Incorporates six forms, by reference, into the regulations. A copy of each of the following forms has been made available for public review:
 - CDC 128-B (Rev. 4/74), General Chrono
 - CDCR 1502 (Rev. 10/06), Activity Report
 - CDC-128-G (10/89), Classification Chrono
 - CDC 115 (07/88), Rules Violation Report
 - CDC 115-A (7/88), Serious Rules Violation Report
 - CDC 115-C (5/95), Rules Violation Report – Part C
- Establishes, for use on a statewide basis, three new Department forms which are incorporated by reference into the regulations. A copy of each of the following forms has been made available for public review:
 - CDCR 2234 (07/12), ACP Application and Voluntary Agreement
 - CDCR 2235 (09/12), Alternative Custody Program Screening Form
 - CDCR 1516-ACP (06/11), Requirements of the Alternative Custody Program

EVALUATION OF CONSISTENCY / COMPATIBILITY WITH EXISTING REGULATIONS:

The Department has determined that these proposed regulations are consistent and compatible with existing state laws and regulations. The Department reached this conclusion because ACP is a new program, enacted by statute. The proposed regulations will supplement existing regulations in order to enact the new program that is not currently the subject of existing regulations.